

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDREW GARCIA,

Plaintiff,

v.

No. CV 20-1179 MV/CG

DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte*. Plaintiff Andrew Garcia, who is currently incarcerated, initiated this civil rights proceeding on November 12, 2020. (Doc. 1). At that time, Mr. Garcia submitted an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915, but he did not include the required six-month inmate account statement. (Doc. 2). On November 16, 2020, the Court ordered Mr. Garcia to cure the deficiency within 30 days by submitting his inmate account statement. (Doc. 3). On November 23, 2020, Mr. Garcia sent the Court his inmate account statement. (Doc. 4).

On November 24, 2020, the Court granted Mr. Garcia's application to proceed without prepayment of costs or fees pursuant to 28 U.S.C. § 1915. (Doc. 5). The Court further required Mr. Garcia to make an initial partial payment of \$40.25 or show cause why he should not be required to make the payment by December 24, 2020. *Id.* However, Mr. Garcia did not submit the initial partial payment or otherwise respond to the Court's November 24, 2020 Order by the deadline.

When the Court grants a prisoner leave to proceed without prepayment of costs or fees pursuant to 28 U.S.C. § 1915, the Court is required to:

[A]ssess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1). The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. See *Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003).

Mr. Garcia was ordered to make the required partial payment under 28 U.S.C. § 1915, or show cause why the payment should be excused, but he has failed to do so. The Court will therefore require Mr. Garcia to show cause by February 22, 2021, why this action should not be dismissed for non-compliance with the Court's November 24, 2020 Order. Failure to show cause or otherwise respond to this Order may result in dismissal of this case without further notice.

IT IS THEREFORE ORDERED that Mr. Andrew Garcia show cause by **February 22, 2021**, why his *Prisoner's Civil Rights Complaint*, (Doc. 1), should not be dismissed for failure to comply with 28 U.S.C. § 1915 and with the Court's *Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915(b) and to Make Payment or Show Cause*, (Doc. 5), filed November 24, 2021.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE